Allen Services Company, Inc. and Peatross Service Company, Inc. and International Brotherhood of Electrical Workers, Local 362, AFL-CIO, Petitioner. Case 5-RC-13853

September 9, 1994

## DECISION, ORDER REMANDING, AND DIRECTION OF ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer John O'Donnell. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, the Regional Director for Region 5 on March 18, 1993,1 transferred this case to the Board for decision. Thereafter, the Petitioner filed a brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three member panel.

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. They are affirmed.

On the entire record in the case, the Board finds:

1. Allen Services Company, Inc. is a Georgia corporation with offices in Atlanta, Georgia, and worksites in Manassas and Fredericksburg, Virginia, and elsewhere. Allen Services is engaged in providing full service maintenance to businesses including restaurants, buildings, and railroads. In the course and conduct of its business operations during 1993, it purchased and received materials, goods, and services valued in excess of \$50,000 directly from points outside the State of Georgia.

Peatross Service Company is a Georgia corporation with an office in Atlanta, Georgia, and worksites in Manassas and Fredericksburg, Virginia, and other States engaged in providing full maintenance, repair, and janitorial services to businesses and railroads. Specifically in this matter, Peatross has the contract with Amtrak for the provision of certain services at Manassas and Fredericksburg, Virginia, for the Virginia Railroad Express (VRE). During the past 12 months, a representative period, Peatross purchased and received at its Georgia location, materials, goods, and services valued in excess of \$50,000 from points directly outside of the State of Georgia.

The Employer<sup>2</sup> contended at the hearing that jurisdiction over its operation should be with the National

Mediation Board under the Railway Labor Act and that the petition should be dismissed. The Petitioner, on the other hand, contends that jurisdiction is properly with the National Labor Relations Board.

Section 2(2) of the National Labor Relations Act provides in pertinent part that the term "employer" as used in the National Labor Relations Act should exclude any person subject to the Railway Labor Act.

Accordingly, because of the nature of the jurisdictional question, we requested that the National Mediation Board (NMB) determine the applicability of the Railway Labor Act to the Employer. In reply, the Board was advised by the NMB that it had concluded as follows:

The Board [National Mediation Board] declines to assert jurisdiction over Peatross. The Board's analysis of the record in terms of its jurisdictional standards reveals that Peatross is not a carrier nor is it directly or indirectly controlled by, or under common control with, a carrier. Therefore, Peatross Services Co., Inc. is not subject to the jurisdiction of the Railway Labor Act.<sup>3</sup>

In view of the foregoing, this Board will assert jurisdiction over the Employer if its operations satisfy this Board's jurisdictional standards. The Employer's annual out-of-state purchases in excess of \$50,000 satisfy the relevant inflow standard for the assertion of jurisdiction over entities providing ancillary services to passenger transit systems. Accordingly, we deny the motion to dismiss the petition and find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction.<sup>4</sup>

2. The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

<sup>&</sup>lt;sup>1</sup>The petition was filed on February 18, 1993, and was subsequently amended at the hearing held on March 11, 1993.

<sup>&</sup>lt;sup>2</sup> The Petitioner refers to the Employer as Allen Services—Peatross. Emp. Exh. 10, which is the bid application for the Amtrak contract, shows the Employer's name at one point as Peatross Serv-

ice Co. and at another point as the Allen Services Company Corp. d/b/a Peatross Service Co. The bid was signed by an individual identifying herself as vice president of the Allen Service Corp. Buddy Allen, the president of both Peatross Service Co. and Allen Services Company, testified that it was his understanding that they are two separate companies. Allen further stated that he did not know who the officers are in each of the two companies or if they are identical. He testified that the employees involved here are employed under a contract that Peatross Service Company has with Amtrak, that Amtrak makes payments to Peatross Service Company, and that some portion of the funds are directed to Allen Services Company. The employees are paid from funds drawn on the account of Allen Services Company. The National Mediation Board, which considered the jurisdictional issue (see infra), determined that Peatross employs the individuals at issue. In our view, the relationship between the companies cannot be determined on the basis of the record. Nevertheless, for purposes of this decision, we will refer to Peatross as the Em-

<sup>&</sup>lt;sup>3</sup>The Petitioner had also filed a petition with the NMB. The dismissal is cited as *Peatross Services Co.*, 21 NMB 148 (1994).

<sup>&</sup>lt;sup>4</sup>The parties stipulated that both the Employer and Allen Services are engaged in interstate commerce within the meaning of the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In May 1992, the Employer was awarded a contract by Amtrak to provide train maintenance services for the VRE at the Manassas and Fredericksburg rail yards.<sup>5</sup> These services include cleaning of the train cars, inspection, electrical and mechanical maintenance including minor repairs of the locomotives and railcars, and providing round-the-clock security for equipment at the service sites when not in use.

The record reveals that at the Fredericksburg site, the Employer employs one carman, one cleaner, two electricians, and three security people. At the Fredericksburg site, the Employer employs one carman, one machinist, one cleaner, and three security people.

The Petitioner seeks a unit composed of all maintenance and cleaning employees, cleaners, electricians, mechanics, and carmen working at the Employer's Manassas and Fredericksburg, Virginia rail yards. The Petitioner did not state any exclusions but contends that Paul Hudson and Dairl Sluss are leadmen and not supervisors, and thus are unit employees. The Employer contended at the hearing that Hudson and Sluss are supervisors, that certain other employees should be excluded as guards, and that four other employees should be excluded because they are relatives of a supervisor.

A. Supervisors. The Employer seeks to exclude Hudson and Sluss as supervisors on the basis that each of them is in charge of one of the Employer's sites. The Petitioner contends that Hudson and Sluss are not supervisors because, for a significant portion of their worktime, they perform bargaining unit mechanical work alone, leaving them little time to supervise the few other employees. Further, it argues that all supervising is accomplished by fax from the general manager in Atlanta, Fred Lovette, or the Amtrak supervisor, who is on the premises. The Petitioner further contends that because Hudson receives \$14 per hour and Sluss \$10 per hour, their salaries indicate not that they are supervisors, but that they are leadmen.

Having carefully reviewed the entire record, we find, for the reasons discussed below, that Hudson and Sluss are statutory supervisors. Therefore, we shall exclude them from the unit found appropriate.

Section 2(11) of the Act sets forth the indicia of supervisory status as follows:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such

action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The statutory indicia set forth above are in the disjunctive and only one need exist to confer supervisory status on an individual. *Opelika Foundry*, 281 NLRB 897, 899 (1986). The burden of proving supervisory status rests on the party asserting that such status exists. *Bowne of Houston*, 280 NLRB 1222 (1986).

Paul Hudson testified without contradiction that he is the supervisor at the Employer's Manassas site and that he also performs work as a carman (electrician). Hudson testified that he hired Dairl Sluss, who is a supervisor and carman at the Fredericksburg site. Hudson also makes up the work schedules for the Manassas site, signs off on the timesheets, and approves requests for any overtime for both the Manassas and Fredericksburg facilities. On November 3, 1992, he was appointed by the Employer as the regional supervisor over both locations. His responsibilities include overseeing all service operations, coordinating all staff schedules, and serving as the main contact with Amtrak management and the Atlanta office. In this capacity, he receives daily work reports and other communications. He communicates and reports directly to Fred Lovette, the Employer's general manager, who is located in Atlanta. Lovette also testified that in hiring casual employees, he only places the newspaper ads and then refers the applicants to either Hudson or Sluss for an interview and actual hiring decision. Lovette further testified that with the craft employees,6 he does the prequalification and background checks and that the actual hiring decision may be made by either Hudson or Sluss, who would personally interview them, or it may be a joint decision by him and the supervisor, depending on his availability.

The record also shows that Sluss hired his wife as a cleaner, and his two sons and brother-in-law as security employees. Sluss also makes up the work schedules, signs off on the employees' timesheets, and grants employees time off.

In view of the foregoing evidence, we find that Hudson and Sluss are supervisors who not only have apparent supervisory authority, but have also independently exercised that authority by hiring employees, signing off on the hours they worked, and determining the need for, and authorizing, employees to work overtime, as well as independently scheduling employees for work. Further, they are the only supervisors present at the two sites on a day-to-day basis. Lovette's testimony was uncontradicted that while an Amtrak supervisor is present, he does not supervise the Employer's

<sup>&</sup>lt;sup>5</sup> Also referred to in the Employer's contract as Spotsylvania.

<sup>&</sup>lt;sup>6</sup>Electricians, carmen, mechanics, and machinists are considered craft employees.

employees and if the Amtrak supervisor has a problem or question, he will consult with either Hudson or Sluss. They are therefore excluded from the unit as supervisors under Section 2(11) of the Act.

B. Guards. The Employer identified certain employees as security personnel and seeks their exclusion as guards.7 The Petitioner contends that they are not guards because they do not enforce any rules for the protection of property or safety. This is so, the Petitioner argues, because no rules exist. The Petitioner asserts that these employees are cleaners who are assigned to work the weekends because of their low rate of pay; that they have no authority; and that they do not wear uniforms or have special security equipment such as weapons, handcuffs, clubs, or a radio. Moreover, the Petitioner argues, all the employees watch out for the security of the equipment whether it is during the week or weekends, and that, to find specific employees to be guards because they carried out their responsibilities to protect their employer's property "would make a mockery of the Act."

For the reasons discussed below, we find that those employees identified by the Employer as security personnel are guards within the meaning of the Act. Accordingly, they shall be excluded from the unit.

The Employer is required by its contract with Amtrak to provide around-the-clock security for the VRE equipment. During the week, the trains leave the rail yards each morning and return at 5 p.m. The craft employees and cleaners are then present throughout the night and next morning, so the Employer does not have a need for specific security employees to be present. However, the security people work the weekends starting at 5:30 p.m. Friday to 7 p.m. Sunday. Each person works a specific shift. They are required to sit in the office and make sure no one comes onto the premises, climbs on the trains, or vandalizes them. If someone comes onto the grounds, the security personnel are required to call the police. They do not carry guns or have dogs.

Hudson testified that at the Manassas facility employees Brenda Kline, James Mullins, and Matthew Brown perform security functions. He also stated that at the Fredericksburg facility employees Jerry and Jonathan Sluss and John Napier perform security functions. The record reveals that Kline works from 9:30 p.m. Friday to 8 a.m. Saturday. Brown works from 8 a.m. to 8 p.m. on Saturdays and Mullins works from midnight Saturday to 7 p.m. Sunday. Jerry and Jonathan Sluss divide the weekend between them, and Na-

pier works part time about once per month. Although these security employees have no special training as guards and do not wear guard uniforms or carry firearms, we conclude that these six part-time, weekend security employees are employed for security purposes.8 In performing their security functions, they enforce against unauthorized persons rules to protect the safety of the VRE equipment, keep unauthorized persons off the property, and protect the premises. The fact that they notify the police does not detract from their guard status. Rather it is sufficient that they possess and exercise responsibility to observe and report trespass infractions because this is an essential part of the Employer's procedures for protecting the premises and equipment. The possibility that two of them may also have other duties does not negate their status as guards. Jakel Motors, 288 NLRB 730, 742-743 (1988).

C. Relatives of Management. The Employer contends that beause Dairl Sluss is a supervisor, his wife, two sons, and brother-in-law should be excluded because they enjoy special benefits as a result of their relationship. The Petitioner contends that because Sluss is neither an owner, partner, officer, nor stockholder of the Company, Sluss' relatives should not be excluded.

The definition of an employee in Section 2(3) of the Act specifically excludes "any individual employed by his parent or spouse." It is also well established that the Board will exclude from bargaining units the children, spouses, and close relatives of individuals who have substantial stock interests in the Company, especially if the employee enjoys "special status" and if that special status aligns his interest more closely with management than with unit employees. The special status test is also applied to determine the eligibility of relatives of nonowner managers.

The record does not show, nor does the Employer provide any evidence, that Sluss is an owner, stockholder, or close relative of the owners or substantial stockholders. However, we have previously determined that Dairl Sluss is a supervisor. We have also excluded Sluss' two sons, Jerry and Jonathan, and his brotherin-law, John Napier, as guards. This leaves his wife Janet for consideration under the "special status" standard for relatives of members of management.

Janet Sluss is employed as a cleaner responsible for cleaning the trains Monday through Friday from 5:30 to 10:30 p.m., 5 days a week for 5 hours per day at \$5.50 per hour. Except for a period between May and November 1992, when Sluss assigned the majority of overtime to his family, it does not appear on this record that Janet Sluss' working conditions differed from those of the other employees. Neither has the

<sup>&</sup>lt;sup>7</sup>Sec. 9(b)(3) of the Act states that the Board shall not "decide that any unit is appropriate . . . if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises."

<sup>&</sup>lt;sup>8</sup> It is unclear whether Jerry and Jonathan also perform or have performed some cleaning functions.

<sup>&</sup>lt;sup>9</sup> See Cumberland Farms, 272 NLRB 336 (1984).

Employer shown that Janet Sluss enjoys any other jobrelated privileges by virtue of her marital status not accorded to the other employees in the unit found appropriate.

We find that Janet Sluss' family relationship has not afforded her any other privileges not shared by other employees in the unit and that she shares a sufficient community of interest with the employees in the unit found appropriate.

In accord with the above analysis, we find that the unit appropriate for collective bargaining within the meaning of Section 9(c) of the Act is as follows:

All full-time and regular part-time maintenance and cleaning employees, all cleaners, electricians, mechanics and carmen working at the Employer's Manassas and Fredericksburg, Virginia rail yards; excluding all other employees, guards and supervisors as defined in the Act.

## ORDER

It is ordered that the above-entitled matter is remanded to the Regional Director for Region 5 for further processing consistent with this decision.

[Direction of Election omitted from publication.]